

Applicant: P. Bonutti  
Application No.: 09/988,954  
Examiner: P. Prebilic

### Remarks

In an Office Communication mailed September 12, 2003, the Examiner stated that the Applicant's reply filed on June 26, 2003 was not fully responsive to the prior Office Action because "the shift from the elected spacer embodiment to the bone plate and screw embodiment (an unrelated species not previously claimed) is not permitted." In response, Applicant has amended some claims, canceled other claims, and added new claims.

Regarding independent claim 62, Applicant has amended this claim to include an implant drawn to the elected species. As stated in the specification, the implant of claim 62 is used during stabilization surgery (page 31, lines 19-20). During stabilization surgery, body tissue of a patient is placed in a stabilized state relative to other body tissue. Therefore, a spacer may be used during stabilization surgery. According to Encarta® World English Dictionary, North American Edition, a spacer is something that keeps things separate; something inserted between two other things to keep them apart. As used in stabilization surgery, a spacer may be placed between body tissue and other objects to space the tissue and other objects apart from one another. Therefore, amended claim 62 includes an implant that creates a space between a body tissue and at least one other object.

With respect to claims 70, 114 and 115, Applicant has amended claim 70 and added new claims 114 and 115 claims to include an implant that is fastened. That is, the implant expands radially outwardly into tissue and creates a mechanical interlock (page 32, lines 8-9). Claim 70 includes an implant that is fastened to body tissue. Claim 114 includes an implant that is fastened to at least one other object. Claim 115 includes an implant that is fastened to body tissue and at least one other object.

Regarding claims 107-113, Applicant has added these claims to include an implant that creates a space between different combinations of body tissue and other objects. As mentioned above, Encarta® World English Dictionary, North American Edition defines a spacer as something that keeps things separate; something inserted between two other things to keep them apart. Therefore, Applicant has added claim 108 to include an implant placed between body tissue and body tissue of a different type. Claim 110 was added to include an implant placed between body tissue and bone. Claim 112 was added to include an implant placed between bone

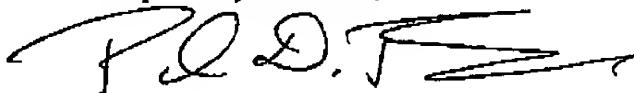
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and at least one other bone. Applicant has added claims 107, 109, 111, and 113 to include an expandable implant that increases the space between the objects the implant is placed between, when the implant expands.

In light of the foregoing, this application is now in better condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

A fee of \$54.00 for 6 additional claims (at small entity rate) is believed to be due with this submission, and a Fee Transmittal Sheet including this fee is submitted concurrently herewith. Please charge any required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 500601 (Docket No. 780-A02-006-11).

Respectfully submitted,



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